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By

Printed Name: Jill R. Clarke

Attorney Docket No.: 023070-079820US  
Client Ref. No.: 2000-493-1

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

ETZLER and ROBERTS

Application No.: 09/657,631

Filed: September 6, 2000

For: LNP, A PROTEIN INVOLVED IN  
THE INITIATION OF MYCORRHIZAL  
INFECTION IN PLANTS

Examiner: Baum, Stuart F.

Art Unit: 1638

RESPONSE TO RESTRICTION

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JUN 12 2002  
TECH CENTER 1600/2900

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

In response to the Office Action mailed March 19, 2002, Applicants elect with traverse to prosecute the claims of Group III directed to methods of modulating mycorrhizal infection comprising transforming a plant with a nucleic acid at least 70% identical to SEQ ID NO: 10. According to the MPEP, where claims can be examined together without undue burden, the Examiner must examine the claims on the merits even though they are directed to independent and distinct inventions. See, the MPEP at 803.01. In establishing that an "undue burden" would exist for co-examination of claims, the Examiner must show that examination of the claims would involve substantially different prior art searches, making the co-examination burdensome. To show undue burden resulting from searching difficulties, the Examiner must show that the restricted groups have a separate classification, acquired a separate status in the art, or that

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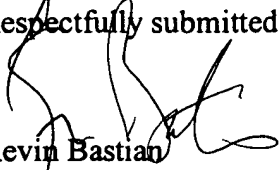
Etzler and Roberts

PATENT  
Attorney Docket No.: 02307O-079820US

searching would require different fields of search (MPEP at § 808.02). Applicants respectfully submit that all of the inventions in the present application can readily be searched without undue burden.

In light of the above, Applicants respectfully request that the restriction be withdrawn. If a telephone conference would expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (415) 576-0200.

Respectfully submitted,

  
Kevin Bastian  
Reg. No. 34,774

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, 8<sup>th</sup> Floor  
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Tel: (415) 576-0200  
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SF 1348027 v1

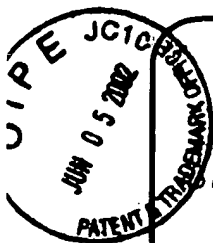
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PTO/SB/21 (08-00)

Approved for use through 10/31/2002. OMB 0654-0031

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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# TRANSMITTAL FORM

to be used for all correspondence after initial filing)

Application Number 09/657,631

Filing Date September 6, 2000

First Named Inventor Etzler, Marilyn E.

Group Art Unit 1638

Examiner Name Baum, Stuart F.

Total Number of Pages in This Submission

2

Attorney Docket Number

023070-079820US

## ENCLOSURES (check all that apply)

☒ Fee Transmittal Form

☐ Fee Attached

☒ Amendment / Response

☐ After Final

☐ Affidavits/declaration(s)

☒ Extension of Time Request

☐ Express Abandonment Request

☐ Information Disclosure Statement

☐ Certified Copy of Priority Document(s)

☐ Response to Missing Parts/ Incomplete Application

☐ Response to Missing Parts under 37 CFR 1.52 or 1.53

☐ Assignment Papers (for an Application)

☐ Drawing(s)

☐ Licensing-related Papers

☐ Petition Routing Slip (PTO/SB/69) and Accompanying Petition

☐ Petition to Convert to a Provisional Application

☐ Power of Attorney, Revocation Change of Correspondence Address

☐ Terminal Disclaimer

☐ Request for Refund

☐ CD, Number of CD(s)

☐ After Allowance Communication to Group

☐ Appeal Communication to Board of Appeals and Interferences

☐ Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)

☐ Proprietary Information

☐ Status Letter

☒ Other Enclosure(s) (please identify below):

Response to Restriction (2 pgs.); Form PTO/SB/17 Fee Transmittal Sheet (1 pg. + 1 pg. copy) with authorization to charge Deposit Account No. 20-1430 in the amount of \$110 for one month extension of time: Return Postcard

Remarks

The Commissioner is authorized to charge any additional fees to Deposit Account 20-1430.

## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm and Individual name

Townsend and Townsend and Crew LLP  
Kevin Bastian

Reg. No. 34,774

Signature

Date

May 20, 2002

## CERTIFICATE OF MAILING

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Jill R. Clarke

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Jill R. Clarke

Date

May 20, 2002

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# FEE TRANSMITTAL for FY 2001

Patent fees are subject to annual revision.

Complete If Known

Application Number 09/657,631  
Filing Date September 6, 2000  
First Named Inventor Etzler, Ph.D., Marilynn E.  
Examiner Name Baum, Stuart F.  
Group Art Unit 1638  
Attorney Docket No. 023070-079820US

TOTAL AMOUNT OF PAYMENT

(\$)

110

## METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ Other ☐ None

☒ Deposit Account:

Deposit  
Account  
Number

20-1430

Deposit  
Account  
Name

Townsend and Townsend and Crew LLP

The Commissioner is authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☐ Credit any overpayments  
☐ Charge any additional fee(s) during the pendency of this application  
☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

## FEE CALCULATION

### 1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
101	740	201	370	Utility filing fee	
106	330	206	165	Design filing fee	
107	510	207	255	Plant filing fee	
108	740	208	370	Reissue filing fee	
114	160	214	80	Provisional filing fee	

SUBTOTAL (1)

(\$)

### 2. EXTRA CLAIM FEES

Total Claims	Extra Claims	Fee from below	Fee Paid
-20** =	X		
Independent Claims -3** =	X		
Multiple Dependent	X		

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
103	18	203	9	Claims in excess of 20	
102	84	202	42	Independent claims in excess of 3	
104	280	204	140	Multiple dependent claim, if not paid	
109	84	209	42	** Reissue independent claims over original patent	
110	18	210	9	** Reissue claims in excess of 20 and over original patent	

SUBTOTAL (2)

(\$)

\*\*or number previously paid, if greater; For Reissues, see above

## FEE CALCULATION (continued)

### 3. ADDITIONAL FEES

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
105	130	205	65	Surcharge - late filing fee or oath	
127	50	227	25	Surcharge - late provisional filing fee or cover sheet.	
139	130	139	130	Non-English specification	
147	2,520	147	2,520	For filing a request for reexamination	
112	920*	112	920*	Requesting publication of SIR prior to Examiner action	
113	1,840*	113	1,840*	Requesting publication of SIR after Examiner action	
115	110	215	55	Extension for reply within first month	110
116	400	216	200	Extension for reply within second month	
117	920	217	460	Extension for reply within third month	
118	1,440	218	720	Extension for reply within fourth month	
128	1,960	228	980	Extension for reply within fifth month	
119	320	219	160	Notice of Appeal	
120	320	220	160	Filing a brief in support of an appeal	
121	280	221	140	Request for oral hearing	
138	1,510	138	1,510	Petition to institute a public use proceeding	
140	110	240	55	Petition to revive - unavoidable	
141	1,280	241	640	Petition to revive - unintentional	
142	1,280	242	640	Utility issue fee (or reissue)	
143	460	243	230	Design issue fee	
144	620	244	310	Plant issue fee	
122	130	122	130	Petitions to the Commissioner	
123	50	123	50	Petitions related to provisional applications	
126	180	126	180	Submission of Information Disclosure Stmt	
581	40	581	40	Recording each patent assignment per property (times number of properties)	
146	740	246	370	Filing a submission after final rejection (37 CFR § 1.129(a))	
149	740	249	370	For each additional invention to be examined (37 CFR § 1.129(b))	
179	740	279	370	Request for Continued Examination (RCE)	
169	900	169	900	Request for expedited examination of a design application	

Other fee (specify)

The Commissioner is authorized to charge any additional fees to the above noted Deposit Account.

\*Reduced by Basic Filing Fee Paid

SUBTOTAL (3)

(\$110)

## SUBMITTED BY

Complete (if applicable)

Name (Print/Type)	Kevin Bastian	Registration No. (Attorney/Agent)	34,774	Telephone	415-576-0200
Signature		Date	May 20, 2002		

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